# Gods and Demons AC

*Ought* implies a moral obligation,[[1]](#footnote-1) so I value morality. Retributivism must use voluntary desert and justify punishment for its own sake. **Hart[[2]](#footnote-2):**

It is I think helpful to start with a simple, indeed a crude, model of a **retributive theory** which would satisfy stricter usage. Such a theory will **assert[s]** three things: **first, that a person may be punished** if, and **only if, he has voluntarily done something** morally **wrong; second**ly, **that** his **punishment must** in some way **match,** or be the equivalent of, the wickedness of **his offence; and third**ly, **that** the justification for **punishing** men under such conditions is that the return of suffering for moral evil voluntarily done, **is itself just or morally good.** So the theory gives a retributive answer to the three questions, ‘What sort of conduct may be punished?’ ‘How severely?’, and ‘What is the justification for the punishment?’

**Prefer my interp:** **A)** Oxford Scholarship[[3]](#footnote-3)notes that Hart was the most important legal philosopher of the 20th century. He’s the most predictable and sets the standard for other interpretations. **B)** Hart’s definition diagnosis how punishment is justified and gives a clear bright line for it. Desert is the heart of neg topic lit; nearly every philosopher justifies retribution on the basis of it.

**And,** neg must defend that retribution ought to be valued over rehabilitation – otherwise there isn’t any substantive clash and burdens aren’t reciprocal. If they aren’t topical presume aff because they have no advocacy with which to derive offense.

The res is a question of which system is a better ideal, not which one should be implemented. **A) Textuality -** ‘ought to be’ entails an ideal, not an action. **Robinson[[4]](#footnote-4):**

Many **ought-sentences** are not prescriptive at all, either prudentially or morally, but express valuations. **Such as** "Everybody **ought to be happy**". This is **[are] not a** prescription or **command** to anybody to act or to refrain. **There is no** possible **act that would count as the fulfillment of the[m]** command, if it were a command. Neither individually nor collectively can we make everybody happy. But the state of universal happiness **[it] is an ideal that** we cherish; and the sentence expresses this ideal. It is thus a valuation. A valuation **is** something **distinct from a prescription**, though they share the negative property of not being descriptions. Even when there is a possible act, the ought may be more ideal than prudential. The question "Do you think the hem of this dress ought to be higher?" suggests the practical possibility of raising the hem; but what the speaker has in mind is rather the question of beauty, of better- ness, of the ideal dress-length. "A clock ought to keep good time" is obviously not an imperative to clocks. Nor is it, except indirectly, a prescription to clockmakers and clockminders. It is a platitudinous restatement of the obvious ideal of a clock. (I take this example from Mellor's discussion of knowledge in Mind, 1967.) "You ought to feel ashamed" might be a moral ought if the speaker believed that we can feel what we will when we will; but usually it is the ideal ought. A man who feels shame after doing such an act is, in the speaker's opinion, a less bad man than one who does such an act and feels no shame. "Feel ashamed" does not refer to an action, a doing. **Wherever ought is followed by a nondoing infinitive**, as "to feel ashamed", **it is** likely to be the ideal **[an] ought.** An outstanding case of the nondoing infinitive is "'to be"; and "ought tobe" usually belongs to a sentence that expresses an ideal, not a command. "Everyone ought to be happy." "There ought to be a chicken in every pot." "Ought to have" is nearly the same. "Everyone ought to have a motor-car." "Everyone ought to have equal opportunity." "There ought to be a minimum wage" can perhaps be interpreted as a command to Parliament, and hence as the moral ought. Still more so the common phrase "There ought to be a law against it". But probably those who use such phrases rarely think of themselves as prescribing to Parliament; and what they say ought to exist is often something that cannot be brought into existence by the passage of a law. They are **expressing an ideal.**

Text controls the internal link into any other standard because without it we don’t know what we’re debating in the first place.

**B) Topic Lit** – **Cahill[[5]](#footnote-5):**

By contrast, **retributivism**, which adopts a **[is] backward-looking** perspective **focusing on the** moral **duty to punish** past wrongdoing, is a justificatory theory, but seemingly **[it is] not** a **prescriptive** one. 8 **It offers retribution as a[n]** justifying **ideal but does not** explain how legal institutions are supposed to make retribution [it] real**.** 9 To the extent retributivism offers guidance about its own operation in practice, it **speak[ing]**s **only to the content of** criminal law **rules,** and **not** to **their implementation**. 10 Retributive principles may identify what the law should criminalize, 11 and might even say something about the proper idealized level of punishment for those crimes relative to each other. 12 As to matters of application, however, **retrib[s]**utivists tend to **focus only on the** resolution of individual (often **hypothetical**) cases where an offender’s behavior is known or stipulated.

**Finally,** rehab is offered in conjunction with punishment in a proportional manner. **Ihuah[[6]](#footnote-6):**

**Rehabilitation** aims to offer the offenders opportunities to find a useful place in society on release from prison. It does not argue for a ‘no punishment’ for offenders. They must be **punishe[s]**d **fittingly and appropriately** though, opportunities should be availed them to busy their minds away from crime e.g. provision of recreational, educational and vocational for prisoners. This is aimed at re-engineering their criminal mind and to ‘in steal’ in them the spirit of self-reliance if and when they leave prison. Long periods of incarceration make prisoners less able to cope with normal life in the outside world. It is only good that **rehabilitation techniques are designed to counteract** this and other **undesirable effects of punishment**. The issue concerning law and punishment is central to social harmony and should not be reduced to a neither nor question. It is not whether the reductionist theory is more effective than the retributivist theory in curbing or reducing crime as the case may be. Similarly the issue is not whether the reformative, rehabilitative or curative approaches to punishment should replace the reductivist and retributivist theories of punishment. **Punishment** of criminals is no doubt important if society must endure; but only as a means not as an end. It **is** thus suggested as **a compliment** of the reformative, **rehabilitative** and curative **approaches which should be incorporated in the sentencing policies of the courts.**

**And,** moral and legal ‘oughts’ are distinct. **Thus,** the resolution entails a proactive question of legal obligation. **Glos[[7]](#footnote-7):**

The mutual relation of law and ethics can profitably be investigated only if ethics is understood as a normative science.31 If we compare legal norms with ethical norms, it appears that the contents of **ethical norms are in agreement with a given concept or principle, whereas legal norms originate from a certain lawgiver regardless of contents.** It follows that legal and ethical norms may be likened to two circles which cover the same area: legal and ethical norms may coincide, and the same **norm[s] may at the same time be both a legal and an ethical norm; but there are legal norms the contents of which have no relevance in ethics** (norms regulating highway traffic), **and there are legal norms which may contradict ethical norms** (norms according to which a soldier is bound to fight and kill).

**And,** moral questions aren’t applicable to issues of criminal justice. **Blumoff[[8]](#footnote-8):**

**Different criminals violating different norms beget different punishments** and, sometimes, different (even conflicting n4) rationales for punishment. **Because of crime's variable empirical facts, finding a rationale for punishment**, and especially one **premised on an a priori conception** **grounded in formal notions of rationality and autonomy, is literally impossible**. I will contend instead that the need for such punishment rationales cannot be intuited usefully solely a priori. The need **to theorize about punishing**, like the implementation of punishment itself, **arises a posteriori, a fact that** considerably **undermines the** wholly formal premises of rationality and autonomy upon which traditional **non-consequentialist** (Kantian) **and consequentialist** (Benthamite) **theories** ultimately rest. The point is simply that **there cannot be a single high-level normative theory capable of taking account of** a practice which, by its nature, must account for a variety of conditions, including **the nature of the crimes involved, the context in which they occur, and the desire to take account of the variety of individuals who commit wrongs befitting punishment.** This last group includes, at a minimum, two types: those who are educable, for example, and those who are not, and those who, like Dahmer, pose risks that are unacceptable by any standards, and those who may not. If one factors these conditions among themselves, and then adds to those dizzying permutations the fact that we owe to ourselves and our progeny the categorically imperative, multi-faceted duty to protect our children, one subverts the usefulness of any single theoretical approach. **A**n eclectic **pragmatic legal approach, not a** formal **moral approach, must direct this inquiry.**

**Therefore,** the standard is consistency with legal obligations. **However,** even if the resolution is in actuality a moral ought, legality still holds supremacy over and determines the content of normative rules. **Green[[9]](#footnote-9):**

**Legal systems make moral norms determinate; they supply both information and motivation that** help **make** those **norms effective**; they support valuable forms of social cooperation. Human nature being what it is, it is overwhelmingly likely that *some* good will come of all this, if only as a matter of natural necessity. Hart is both alert to and suspicious of these arguments. He concedes that there are at least “two reasons (or excuses) for talking of a certain overlap between legal and moral standards as necessary and natural.”42 The first is his “minimum content” thesis: **Legal systems cannot be identified by their structure alone; law** also has a necessary content. It **must contain rules that regulate things like violence**, property, and agreements in a way that promotes the survival of (at least some of) its subjects. The second is the thesis that [also] every existing legal system does some administrative—or, as he also calls it, “formal”—justice. Hart holds that every legal system necessarily contains general rules, that general rules cannot exist unless they are applied with some constancy, and that such constancy is a kind of justice: “[T]hough the most odious laws may be justly applied, we have, in the bare notion of applying a general rule of law, the germ at least of justice.” Hart holds that every legal system necessarily contains general rules, that general rules cannot exist unless they are applied with some constancy, and that such constancy is a kind of justice: “[T]hough the most odious laws may be justly applied, we have, in the bare notion of applying a general rule of law, the germ at least of justice.”45 Hart sympathetically develops both the minimum content thesis and the germ-of-justice thesis and then stops just short—in any case, I think he means to stop short—of concluding that these theses prove there to be necessary connections between law and morals. His grounds for hesitation seem to be that neither argument establishes a moral duty to obey the law and that each is consistent with the most stringent moral criticism of a legal system that realizes them: Such legal systems may even be “hideously oppressive,” denying to “rightless slave[s]” the minimum benefits that law necessarily provides to some.46 All of this is so, but it does not prove the separability thesis. At most, it shows that the values that the minimum content and germ-ofjustice theses necessarily contribute to law may well be accompanied by serious immoralities. Still, if every legal system necessarily gives rise to A and B, then it necessarily gives rise to A, even if B counts on the demerit side. The derivative connections just discussed rely on the supposition that a legal system is effective amongst people with natures much like our own, living in circumstances much like our own. They are therefore among the contextually necessary connections between law and morality. But there are necessary connections between law and morality that are more direct. Here are four of the more interesting ones:Morality has objects, and some of those objects are necessarily law’s objects. **Wherever there is law, there is morality**, and **they regulate the same subject matter**—**and do so by analogous techniques.** As Kelsen noted, “[j]ust as natural and positive law govern the same subject-matter, and relate, therefore, to the same norm-*object*, namely the mutual relationships of men . . . so **both also have in common the universal form of this governance, namely *obligation***.”47 This is broader than the minimum-content thesis. Some think Hart is too timid in limiting the necessary content of law to survival promoting rules.48 Actually, unless “survival” is understood in a vacuously broad way, Hart’s claim is too bold: There are lots of suicide pacts around these days. But **even legal systems that hinder individual or collective survival** for the sake of things like unrestrained consumption, national glory, or religious purity nonetheless share a common content: They **regulate things that the society** (or its elites) **takes to be** high-stakes **matters of social morality. If** we encounter **a normative system** that **regulates only low-stakes matters** (such as games or courtesies), **then we have not found a legal system. It is** in **the nature of law to have a large normative reach**, one that extends to the most important concerns of the social morality of the society in which it exists. Exactly how law regulates these matters (whether by enforcing them, protecting them, or repressing them) varies, as does its success and the merit in doing so. Unlike the derivative arguments, therefore, *N1* does not show that every legal system necessarily has some moral merit; it shows that there is a necessary relation between the scope of law and morality. This is one of the things that make law so important; it also explains why normative debates about law’s legitimacy and authority have the significance that they do.

**And,** this is particularly true given that moral norms are not identifiable outside of the pluralistic and contextual environments from which they arise. Legality unifies these disagreements. **Habermas[[10]](#footnote-10):**

It is characteristic of those who advocate such a value-based administration of justice— whether the basics be determined by natural law or in a contextualist fashion — that they share Weber’s premises, but with a change of sign. They place procedures, abstract principles, and concrete values all on the same level. **Since moral principles are always already immersed in concrete-historical contexts of action, there can be no justification or assessment of norms according to a universal procedure that ensures impartiality**. Neo-Aristotelians are especially inclined to **an ethic of institutions** that **renounces the gulf between norm and reality, or principle and rule**, annuls Kant’s distinction between questions of justification and questions of application, and reduces moral deliberations to the level of prudential considerations. 31 At the level of a merely pragmatic judgment, **normative and purely functional considerations are then indistinguishably intermingled**. In this view, the Federal Constitutional Court, in its assessment of values, has no criteria by which it could distinguish the place of normative principles (such as equal treatment or human dig- nity) or important methodological principles (such as proportionality or appropriateness) from functional imperatives (such as economic peace, the efficiency of the military, or, in general, the so-called feasibility proviso). **When individual rights and collective goods are aggregated as values in which each is as particular as the next**, deontological, teleological, and system theoretical **considerations** indistinguishably **flow into one another**. And the suspicion is only too justified that in the clash of value preferences incapable of further rationalization, the strongest interest will happen to be the one actually implemented. This explains, moreover, why the outcome of judicial proceedings can be so well predicted in terms of interests and power constellations. This third line of argument is only of relevance insofar as it draws attention to an unresolved problem. The example of the judiciary’s dealings with deformalized law shows that **the moralization of law now so manifest cannot be denied or annulled; it is internally connected to** the wave of **legal regulation** triggered by the welfare state. However, both natural law —whether in the form of Christian ethics or value ethics—and neo-Aristotelianism remain help- less in the face of this, because they are unsuited to working out the rational core of legal procedures. **Ethics oriented to conceptions of the good or to specific value hierarchies single out particular normative contents. Their premises are too strong to serve as the foundation for universally binding decisions in a modern society characterized by** the **pluralism** of gods and demons. Only theories of morality and justice developed in the Kantian tradition hold out the promise of an impartial procedure for the justification and assessment of principles

***Thus,*** *legality trumps moral authority because only it is binding for an agent.* ***Habermas 2:***

*An* ***autonomous morality provides only*** *fallibilistic* ***procedures for*** *the justification of* ***norms*** *and actions. The high degree of* ***cognitive uncertainty is heightened by the contingencies*** *connected with the context-sensitive application* ***of highly abstract rules to complex situations*** *that are to be described as appropriately and completely, in all relevant aspects, as possible.36 Furthermore,* ***there is a motivational weakness corresponding to this cognitive one.*** *Every post-traditional morality demands a distantiation from the unproblematical background of established and taken-for- granted forms of life.* ***Moral judgments, decoupled from concrete ethical life*** *(Sittlichkeit),* ***no longer*** *immediately* ***carry*** *the* ***motivational power*** *that converts judgments into actions. The more that morality is internalized and made autonomous, the more it retreats into the private sphere.* ***In all spheres of action*** *where conflicts and pressures for regulation call for unambiguous, timely, and binding decisions,* ***legal norms*** *must* ***absorb the contingencies that would emerge if matters were left to strictly moral guidance****. The* ***complementing of morality by coercive law can itself be morally justified.*** *In this connection K. O. Apel speaks of the problem of the warranted expectation of an exacting universalistic morality. 37 That is,* ***even morally well-justified norms may be warrantedly expected only of those who can expect that all others will also behave in the same way****. For* ***only under the condition of a general observance of norms do reasons that can be adduced for their justification count****. Now,* ***if a practically effective bindingness cannot be*** *generally* ***expected from moral insights, adherence*** *to corresponding* ***norms is reasonable****, from the perspective of an ethic of responsibility,* ***only if they are enforced****, that is, if they acquire legally binding force. Important characteristics of positive law become intelligible if we conceive of* ***law*** *from this angle of* ***compensate[es]****ing for* ***the weaknesses of an autonomous morality. Legal norms borrow their binding force from the government’s potential for sanctions****. They apply to what Kant calls the external aspect of action, not to motives and convictions, which cannot be controlled. Moreover, the professional administration of written, public, and systematically elaborated law relieves legal subjects of the effort that is demanded from moral persons when they have to resolve their conflicts on their own. And finally, positive law owes its conventional features to the fact that it can be enacted and altered at will by the decisions of a political legislature. This dependence on politics also explains the instrumental aspect of law. Whereas moral norms are always ends in them- selves,* ***legal norms*** *are also means for realizing political goals. That is, they* ***serve not only the impartial settlement of conflicts of action but also the realization of political program****s. Collective goal-attainment and the implementation of policies owe their binding force to the form of law. In this respect, law stands between politics and morality. This is why, as Dworkin has shown, in judicial discourse,* ***arguments about the application and interpretation of law are intrinsically connected with*** *policy arguments as well as with* ***moral arguments.***

**So, I contend** that the state is legally obligated to provide rehabilitation. **First,** parole contracts mean offenders are due rehab as a part of their release conditions. **Rotman[[11]](#footnote-11):**

Another possible **source of a rehabilitative obligation on the part of the state is parole contracts**, in which the inmate and **parole authority agree upon a release date on the condition that the inmate completes certain obligations including rehabilitation programs**. Cullen and Gilbert point out that **the very existence of a contract system puts pressure on correctional officers to improve treatment services**,262 and they advocate **mandatory contracts obligating the state to rehabilitate**.263 "**Mutual agreement programs" have proliferated in state prison and parole systems and are also being applied in probation programs**.264 These comprise a variety of negotiations in which **correctional authorities commit themselves to provide the rehabilitative resources that allow inmates to fulfill the conditions of their release.265**

**And,** international law and numerous domestic treaties mandate rehabilitation. **Rotman 2:**

**A variety of sources strongly support the existence of a right to rehabilitation based on** customary **international law. The United Nations Standard** Minimum Rules for the Treatment of Prisoners, adopted in 1955, provide in article 58: The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of **imprisonment is used to ensure,** so far as possible, **that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life. In other articles this document prescribes detailed guidelines for an individualized and integral rehabilitative action**.227 The United Na- tions **International Covenant on Civil and Political Rights, in force since 1976, establishes that "[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."**228 **The American Covention of Human Rights**, entered into in 1978, provides that "[p]un- ishments **consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of prisoners**."229

**And,** the harmful conditions inside prisons create a reciprocal obligation for the government to help offenders get back into society. This is verified under constitutional law. **Rotman 3:**

**To subject inmates to the harmful effects of imprisonment with- out allowing them any possibility of counteracting these harms is additional and unlawful punishment. Without opportunities for rehabilitation** at the educational, labor or therapeutic levels, **the** ware- housed **offender inevitably deteriorates.** Because penal servitude and hard labor have been abolished, imprisonment in a modern civilized society consists only of the deprivation of liberty. To administer such legal punishment without unwarranted side-effects requires rehabilitative action. This effort cannot be reduced to a discrete set of programs, but should create a rehabilitative environment through the reorganization of the correctional institution and its linkage, so far as possibile, with the community through various forms of fur- loughs and pre-release programs. Efforts to avoid the pernicious effects of incarceration find their ultimate expression in the creation of noncustodial alternatives to incarceration. The most promising field for rehabilitative undertakings lies in the community. **Modern rehabilitative policies represent a challenge to the fantasy that the dark side of society can be forgotten and that its deviants can be simply packed off to prisons**. But rehabilitative action should not remain merely a goal of governmental policies, however enlightened and humanistic. **Rehabilitation will be fully realized only when it is recognized as a right of the offender, independent of utilitarian considerations and of transient penal strategies.** Viewed as the culmination of a continuum of offenders' rights, rehabilitation can no longer serve as a pretext for discretionary abuse on the part of sentencing and correctional authorities. To the contrary, a right to rehabilitation reinforces the legal status of the sentenced offender and requires sentencing and correctional policies compatible with rehabilitative prison conditions. **Because of its deep connection with the essence of criminal punishment, the right to rehabilitation has a paramount constitutional significance.** Thus,A **constitutional right to rehabilitation has been included in the bill of rights of various countries and is a basic principle of customary international law.** Although **American courts** have not acknowledged a constitutional Federal right to rehabilitation, they **have recognized** it in a negative way as **the right to counteract the deteriorating effects of imprisonment. The courts have also granted inmates a limited right to psychiatric and psychological treatment**. Arguments based on **the 14th and 8th amendments** and the application of customary international law **reveal an implicit right to rehabilitation in the U.S. Constitution.** Viewed as the culmination of a continuum of offenders' rights, rehabilitation can no longer be a pretext for discretionary abuse by sentencing and correctional authorities. **A right to rehabilitation reinforces the legal status of the sentenced offender and requires sentencing and correctional policies compatible with rehabilitative prison conditions. Full recognition of this rehabilitative mandate reinforces existing provisions in State constitutions and statutes.**

**And,** retributive accounts are apolitical, so they aren’t consistent with legal obligation. **Brettschneider[[12]](#footnote-12):**

Traditional **retributive accounts of punishment differ from contractualist justifications most significantly in terms of the context within which they frame the problem of punishment. Retributive accounts focus on** the moral worth of either the criminal or **the criminal's particular action in isolation from his** **relationship with the state**. In this sense, **they justify punishment for persons, not punishment for citizens**. The apolitical nature of these accounts is **demonstrated by the priority they give to the question of what is deserved by the criminal qua person rather than the question of what punishment the state can rightfully mete out.** To highlight the problem with an apolitical account of state punishment, consider the following example: suppose a child molester and murderer is sentenced to death. Assume, for the sake of argument, that the punishment is justified. While on Death Row, the child molester is killed by a fellow inmate who is outraged by his crime. In some sense, the child molester received what he "deserves." We have stipulated that the appropriate punishment is death, and that is what he receives.23 However, this "vigilante" approach is problematic because of who inflicts the punishment. **An apolitical theory of punishment fails to recognize that legitimate governments have a distinct authority in punishing that private individuals do not**. Central to the rule of law and in particular to criminal law is the notion that crimes against particular individuals are offenses against society.24 This notion is reflected in the many legal systems in which crimes prosecuted by the state are considered to be controversies between "the people" and the accused individual. This practice suggests that legitimate states coerce on behalf of society as a whole in a way that private individuals cannot. **The notion that state punishment has a distinct justification is reflected in the contractualist approach to punishment**. This approach manifests the distinctness of the state's authority to punish in its requirement that punishments be justifiable to all reasonable citizens. In contrast, **retributive accounts cannot acknowledge a moral distinction between state punishment and private punishment carried out in the same manner because they focus exclusively on what criminals qua persons deserve, not what they deserve qua citizens."**

**Finally,** the death penalty is unconstitutional. **ACLU[[13]](#footnote-13):**

The American Civil Liberties Union believes **the death penalty inherently violates the constitutional ban against cruel and unusual punishment and the guarantees of due process of law and of equal protection under the law**. Furthermore, we believe that the state should not give itself the right to kill human beings – especially when it kills with premeditation and ceremony, in the name of the law or in the name of its people, and when it does so in an arbitrary and discriminatory fashion. **Capital punishment is an intolerable denial of civil liberties and is inconsistent with the fundamental values of our democratic system.**  The death penalty is uncivilized in theory and unfair and inequitable in practice.  Through litigation, legislation, and advocacy against this barbaric and brutal institution, we strive to prevent executions and seek the abolition of capital punishment.  The ACLU’s opposition to capital punishment incorporates the following fundamental concerns: **The death penalty system in the US is applied in an unfair and unjust manner against people, largely dependent on how much money they have, the skill of their attorneys, race of the victim and where the crime took place.  People of color are far more likely to be executed than white people, especially if the victim is white The death penalty is a waste of taxpayer funds and has no public safety benefit. The vast majority of law enforcement professionals surveyed agree that capital punishment does not deter violent crime**; a survey of police chiefs nationwide found they rank the death penalty lowest among ways to reduce violent crime.  They ranked increasing the number of police officers, reducing drug abuse, and creating a better economy with more jobs higher than the death penalty as the best ways to reduce violence.  The FBI has found the states with the death penalty have the highest murder rates. Innocent people are too often sentenced to death.  Since 1973, **over 140 people have been released from death rows in 26 states because of innocence.** Nationally, **at least one person is exonerated for every 10 that are executed**.

**Thus,** affirming logically entails ending the death penalty; you can’t rehabilitate people while simultaneously killing them. The death penalty is logically opposed to the principles of helping offenders. **So,** I affirm.

# Under-View 1

**1.** Aff gets RVIs **A)** **Strat-skew** neg gets flex in the NC and the 746 timecrunched 1AR. They can overcommit one the layer I don’t answer so I need structural compensation. Neg also is reactive the AC, which means their theoretical claims are checked by adaptability. **B) Topic Lit -** RVIs deter neg theory spread in the NC so only they solve back for substance debate on the topic.

**2.** Presume aff **A) Time-skew**. Affs lose 70% of outrounds. If the round’s a tie then I’ve done the better debating because I was structurally disadvantaged. **B)** We assume a statement to be true absent any reason to believe the contrary. If I tell you the door is open and you can’t give me any reason why it isn’t open then the door is open as far as your concerned.

**3.** Skep means you presume because you can’t be normatively compelled to vote for either side since you have no obligation to do so. *It denies theoretical reasons why one side is fairer or more educational because they rely on normative justifications of right and wrong.*

**4*.*** Drop the argument for the AC on theory and let me adapt offense to their interpretation on topicality. **A) I speak in the dark:** I have to choose whether I defend things like implementation vs aim of punishment and they can read a shell on me no matter which side I choose. **B) Preclusion:** both strategies moot the entirety of my six minutes of speech time which both kills my ability to engage the NC and strategically benefits them. **C) Negflex:** they get to choose how to respond to my AC and base their strategy off of the decisions I’m forced to make. Means they have a strat advantage and it nullifies abuse. **D) Discussion**: dropping the AC on theory encourages negs to take advantage of the time-skew advantage and overly invest on theory instead of debating the substance of the topic literature.

# Under-View 2

**First,** *meta,* meta-analysis concludes rehab is better than retribution at preventing crime. **Lipsey and Cullen[[14]](#footnote-14):**

This review has attempted to catalog [in] every meta-analysis that has been conducted on studies of correctional interventions and summarize the most general and robust of their collective findings. Some of these meta-analyses have broad scope, some narrow. Some are elaborate and some are relatively simple. Some are very well done and a few are rather inept. Across this diversity, however, there is striking consistency on a two key points. First, **every meta-analysis** of studies that compare recidivism outcomes for offenders receiving greater versus lesser or no sanctions has **found**, at best, modest mean recidivism reductions for **the greater sanction**s and, at worst, **increased recidivism** for that condition. Second, every meta-analysis **[and] of** large samples of studies **comparing offenders who receive rehabilitation treatment with those who do not has found lower mean recidivism for those in the treatment conditions.** Moreover, **the least of those mean reductions is greater than the largest mean reductions reported by any meta analysis of sanctions**. In addition, **nearly all of the meta-analyses of studies of specific rehabilitation treatments or approaches show mean recidivism reductions** and the great majority of those are **greater than the largest** reductions **found in any meta-analysis of sanctions.**

**And,** rehab is, and always has been, extremely popular. **Cullen[[15]](#footnote-15):**

I was wrong. To be sure, evidence of punitive attitudes toward offenders was not in short supply. **But even at this time and in this context, the public remained supportive of rehabilitation both generally** (Cullen et al., 1988) **and for juveniles** (Cullen et al., 1983). Over the years, with some modest variation**, this finding has been replicated repeatedly** (for a summary, see Cullen et al., 2000; Cullen and Moon, 2002). In my own research, my colleagues and **I have discovered time and again that the public favors rehabilitation as a goal of corrections**, believes that treatment is particularly important for juveniles, and especially supports early intervention programs (Applegate et al., 1997; Cullen et al., 1990, 1998; Moon et al., 2000, 2003; Sundt et al., 1998). To supply just one example, in a 2001 national survey, **we discovered that 80% of the sample thought that rehabilitation should be the goal of juvenile prisons and that over 9 in 10 favored a range of early intervention programs** (e.g., parental management training, Head Start, after- school programs) (Cullen et al., 2002a). I call **public support for rehabilitation [is] a “criminological fact” because over the course of a quarter century, it has been demonstrated in study after study.** Just to reinforce this point again, a 2006 national poll sponsored by the National Council on Crime and Delinquency found that “by an almost 8 to 1 margin (87% to 11%), the US voting public is in favor of rehabilitative services for prisoners as opposed to a punishment-only system” (Krisberg and Marchionna, 2006:1).

**And,** psychological bias means retributivists will disproportionately punish. **Dripps[[16]](#footnote-16):**

FAE **[attribution error] has troubling implications for the retributivist**’s **project** of rationally assessing blameworthiness. The character-based approach directly embraces the project of inferring personality traits from behavior. This is the very inference that the psychological research suggests human observers will make too readily. Consider, in this regard, the Fidel Castro essays, the quiz master experiment, or the foul shots taken in a dimly lit gymnasium. In these experiments, **observers held actors responsible despite the observers’ knowledge of very serious situational constraints**. Indeed the term “correspondence bias” refers precisely to the tendency to associate behavior with a corresponding trait. In the choice approach, the problem recurs. FAE [**attribution error] predisposes observers to exaggerate both volitional capacity and fair opportunity to resist situational pressure**. A choice theorist who does not repudiate situational excuse altogether admits that some bad choices are not blameworthy. As a result of FAE, however, in deciding how hard a choice the actor faced, **observers will tend to attribute the choice to the actor’s character rather than the situation.** FAE tends to magnify the causal significance of the defendant’s conduct relative to other factors. Observers predisposed to believe that the world is just need to identify personal, rather than impersonal, causes for negative events. **Compounding** this tendency **is** the so- called **hindsight bias, which inclines observers** *ex post* **to believe that actual events were probable** *ex ante* **even when they were not.** This, in turn, inclines observers to infer intention, knowledge, or recklessness from the foreseeability of events that were in fact not foreseeable. Harm-based **retributivists, with their focus on causing or risking harm, invite the tendency of observers to commingle fault with causation**, amplified by the hindsight bias. A purely subjectivist culpability theorist, by contrast, considers the actor eligible for punishment based on his subjective awareness of wrongdoing. This may disadvantage the government unduly, as those who focus on the person rather than the situation interpret failed attempts as innocent accidents and harmless recklessness as due care. As the utilitarians have pointed out, **retributivists have** some **difficulty in determining the amount of punishment required by any given instance of culpable wrongdoing**. To the extent that retributivists rely on intuition or the sense of the community to measure proportionate punishments, FAE suggests that **officials attempting to follow retributive theory will overpunish. Their intuitions will tend to overassess** personal as opposed to situational **factors at the time of the wrongdoing.**

# Frontlines

## Weighing

**[I-Law First]**

**1.**

## AT Descriptive Contention Theory

**1. TURN –** every contention is descriptive about how thing occur in the world, or how we form moral claims. There’s ZERO ground or topic lit on both sides under your interpretation.

**2. TURN –** descriptive is most real world because it is literally that – an understanding of states of affairs and how they affect us.

**3. I meet –** you can turn the NC by offering a different interpretation of how the state should will or of what determines the state’s will – e.g. the constitution or public opinion.

**4. I meet** – the NC isn’t descriptive – it’s not making claims about how morality does work but how morality ought to be interpreted relative to the resolution.

**5.** This argument is stupid. Every proposition about anything is always descriptive in some manner – for example, when you vote aff you claim descriptively that the aff should win – but we don’t think it’s unfair for you to do so.

## AT Is-Ought

**1.** You link – every normative claim starts from a descriptive premise about external reality. Your claim that I’m committing is-ought itself commits the fallacy by saying I ought not do it.

**2.** I don’t’ start with a factual premise – the NC framework is normative from the beginning because it says government unification of the will is normative to begin with.

**3.** Make them explain the internal warrants of why this is a logical fallacy – don’t let them just use buzzwords to make args.

**4.** Just because I commit a logical fallacy doesn’t mean my argument is invalid – they don’t explain why logical fallacies are distinctly important for normativity – no argument is infallible. Prefer mine since it’s decent.

## AT Current Law is Retributive

**1.** The Criminal Justice System has been rehabilitative for the past two centuries. **Rachels[[17]](#footnote-17):**

The idea that punishment is justified as a means of preventing crime is so natural and appealing that we might expect it would dominate social-scientific thinking about the criminal justice system. Surprisingly, however, it has not been particularly influential. **During the past 150 years** a different sort of conception has prevailed. In the latter half of the nineteenth century **it was argued that, if we are serious about preventing crime, we should try to identify its causes and do something about them. Crime, it was said, results from poverty, ignorance, and unemployment; therefore, social energy should be directed toward eliminating those blights.** Moreover, when individuals commit crimes, rather than simply punishing them, we should address the problems that caused their aberrant behavior. People turn to crime because they are uneducated, lack job skills, and have emotional problems. So they should be educated, trained, and treated, with an eye to making them into “productive members of society” who will not repeat their offenses. In enlightened circles this came to be regarded as the only sensible approach. As Bertrand Russell once put it, No man treats a motorcar as foolishly as he treats another human being. When the car will not go, he does not attribute its annoying behavior to sin; he does not say, “You are a wicked motorcar, and I shall not give you any more petrol until you go.” He attempts to find out what is wrong and to set it right. 6 Today people are often skeptical about efforts to rehabilitate criminals. Those efforts have not been notably successful, and there is reason to doubt whether they could be successful—for one thing, we do not know nearly enough about the individual causes of crime or the nature of personality or motivation to design effective ways to control them. Nevertheless, **rehabilitationist ideas have been the single most important force in shaping the modern criminal justice system. In the United States prisons are not even called prisons; they are called “correctional facilities,” and the people who work in them are called “corrections officers.”**

**2.**

## AT Constitutionality

**I outweigh:** **A)** I have two violations, both that the death penalty is unconstitutional because it kills innocents, and that current state constitutions say we ought to implement rehabilitation. **B)** I make an interpretive claim, namely that even if the squo constitution negates we should change it because the government is legally obligated to fix the harms that offenders are subject to. **C) Brettschneider** indicates that even if the retributive philosophy is endorsed by the constitution, it can never be a legal obligation because retribution only cares about the crime and not the offender’s relationship with the state.

## AT Due Process

**1.** Due process is constrained by proportionality, and most of all, not killing the innocent. **Rowe[[18]](#footnote-18):**

There is also a converse to retribution: "**Due Process**" or "natural justice" **demands that punishment be limited by the moral desert for the crime committed.** Why don't we just execute all drunk drivers? That would 100% effectuate our policies of deterrence, restraint, and reformation of drunk drivers. It's because **a drunk driver doesn't justly deserve to be put to death for this act, regardless of the positive effects that certainly would occur**. Plain and simple. Which brings me to the Peterson case and the death penalty. If Peterson did what he was convicted of, then he deserves to be put to death. That's not the same as supporting the death penalty. I'm sort of on the fence on this issue. We have to weight the positives and negatives and there are a lot of both (although I remain a cautious supporter of capital punishment). **The ultimate negative is government wrongfully executing an innocent.**

**2.** The death penalty **A)** violates cruel and unusual punishment, and **B)** kills innocents. Due process is killed in the neg world. Cross apply the ACLU evidence in the AC which indicates that this occurs in the status quo and that affirming rehabilitation logically ends the death penalty because you cannot simultaneously kill and help offenders. This also outweighs your due process claims because this is an irreparable violation where people are killed.

**3.** Due process models require rehabilitation. **Siegel[[19]](#footnote-19):**

In *The Limits of the Criminal Sanction,* Herbert Packer contrasted the crime control model with an opposing view that he referred to as the due process model. According to Packer, **the due process model combines** elements of liberal/positivist **criminology with the legal concept of procedural fairness for the accused**. **Those who adhere to due process principles believe in individualized justice, treatment, and rehabilitation of offenders.** If **discretion** exists **in the criminal justice system**, it **should be used to evaluate the treatment needs of offenders.** Most important, the civil **rights of the accused should be protected at all costs. This emphasis calls for strict scrutiny of police search and interrogation procedures, review of sentencing policies, and development of prisoners’ rights.**

**Outweighs: A)** makes an empirical and long-term claim that due process advocates have always valued and advocated for rehabilitation instead of retribution, **B)** your offense goes away because due process advocates actually see individualized and specific treatment to be a due process right, not a violation, **C)** indicates that rehab policies are able to incorporate procedural guidelines and that such policies put an emphasis on preventing the types of violations you’re talking about, **D)** indicates that most, if any, due process violations happen outside of the court system in police raids and other effects of counteracting crime that are distinctly retributive.

## Hart Util Extension

**1.** They conceded the Hart definition that indicates that punishment must be good in and of itself. This is conceded, game over, so the neg advocacy isn’t retributive. **But,** more evidence - you don’t defend a retributive theory of punishment if you appeal to consequentialist justifications for it. **Wood[[20]](#footnote-20):**

It is an altogether different issue how the practice itself is to be justified. Here people often appeal to good consequences of various kinds: to the supposedly beneficial effects of punishment on wrongdoers themselves, or its deterrent effect on people generally, or to the part punishment might play in moral education, or to the way in which punishing wrongdoers gives satisfaction to the public's vengeful feelings toward them. **Those who offer** such **consequentialist justifications for** the practice of **punishment should not be called "retributivists,"** even if they acknowledge that punishment itself is an inherently retributive practice in the sense described in the last two paragraphs.2 **True retributivists** are those who hold a distinctive view about how the practice of punishment is to be justified. They **think that the practice is sufficiently justified** merely **by** the fact that justice demands that some **proportionate evil** should be visited on a person guilty of wrongdoing. **Retributivists** do not necessarily deny that punishment has good consequences, but they do **deny that we need to appeal to [consequences]** them **in justifying the practice of punishment.** Rather, they say that the essential point in the justification of punishment is that it is inherently just to inflict some evil on those who have done wrong.

## Theory

**[AT AC Advocacy Goes Away]**

**1.** No it doesn’t. I still defend generic rehabilitation and my impacts are only linking to the NC based off of general reasons.

**2.** I’m defending aim of punishment view – your arguments are irrelevant because I’m still defending that the general

**[AT Changes Advocacy in the 1AR]**

**1.** No it doesn’t.

**2.** CX checks.

**3.** Neg adaptability checks.

**4.** Neg skew checks.

# Extra Cards

1. http://dictionary.reference.com/browse/ought [↑](#footnote-ref-1)
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3. http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199542895.001.0001/acprof-9780199542895 [↑](#footnote-ref-3)
4. Richard Robinson, “Ought and Ought Not,” Philosophy, Vol. 46, No. 177 (Jul., 1971), pp. 193-202. SM [↑](#footnote-ref-4)
5. Michael Cahill, “Retributive Justice in the Real World,” *Washington University Law Review*, Vol. 85, 817-818. SM [↑](#footnote-ref-5)
6. Alloy Ihuah, [Department of Philosophy, Lagos State University, Ojoo-Lagos, Nigeria], “The Morality and Rationality of Punishment,” *Authors Den*, March 4th, 2010. SM [↑](#footnote-ref-6)
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8. Theodore Y. Blumoff, “Justifying Punishment,” Canadian Journal of Law and Jurisprudence, v. 14 (2), July 2001, p. 166-67. [↑](#footnote-ref-8)
9. Leslie Green, Professor of the Philosophy of Law and Fellow of Balliol College, University of Oxford; Professor, Osgoode Hall Law School of York University, Toronto. POSITIVISM AND THE INSEPARABILITY OF LAW AND MORALS, *NEW YORK UNIVERSITY LAW REVIEW* [Vol. 83:1035 October 2008. SM [↑](#footnote-ref-9)
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13. ACLU, “The Case Against the Death Penalty,” http://www.aclu.org/capital-punishment/case-against-death-penaltyDecember 11th, 2012. SM [↑](#footnote-ref-13)
14. Mark W. Lipsey [Institute for Public Policy Studies, Vanderbilt University], and Francis T. Cullen [Division of Criminal Justice, University of Cincinnati], THE EFFECTIVENESS OF CORRECTIONAL REHABILITATION: A REVIEW OF SYSTEMATIC REVIEWS, Annual Review of Law and Social Science, volume 3, 2007. SM [↑](#footnote-ref-14)
15. Francis T. Cullen [Professor of Criminal Justice and Sociology, University of Cincinnati], “It’s Time to Reaffirm Rehabilitation,” Criminology & Public Policy, 5 (2006): 665–672. SM [↑](#footnote-ref-15)
16. Donald Dripps, “Fundamental Retribution Error: Criminal Justice and the Social Psychology of Blame,” *VANDERBILT LAW REVIEW* [Vol. 56:1383], 2003. SM [↑](#footnote-ref-16)
17. James Rachels, “Punishment and Desert.” Ethics in Practice (Oxford: Basil Blackwell, 1997), pp. 470-479. [↑](#footnote-ref-17)
18. Jon Rowe, “In Defense of Retribution,” *The Jon Rowe Archives,* December 13th, 2004. SM [↑](#footnote-ref-18)
19. Larry J. Siegel, *Criminology,* Thompson Wadsworth, 2006. SM [↑](#footnote-ref-19)
20. Allen W. Wood, [Professor of Philosophy, Indiana University] Hegel's Ethical Thought. Cambridge [↑](#footnote-ref-20)